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CLARK BUTLER, MD

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Jonathan Lewis

VS

Circle K Stores, Inc., and John Doe

4:23-CV-01720-JD

REPORTER: Rita Rodriguez

<p style="text-align: right;">10</p> <p>1 Q. On the Discharge Summary?</p> <p>2 A. No, the second entry was the -- yeah, the</p> <p>3 Discharge, that's correct. And then this is the</p> <p>4 H&P there. There should be an op note, I</p> <p>5 presume. Yeah. That would be me there, yeah.</p> <p>6 Okay. Okay.</p> <p>7 Q. Can you kind of walk me through what Mr. Lewis's</p> <p>8 chief complaints were when he came into the ER</p> <p>9 and then again when you saw him?</p> <p>10 A. Obviously he had had a traumatic injury to the</p> <p>11 tendons below his kneecap, so obviously he had</p> <p>12 bilateral knee pain and loss of power and</p> <p>13 function.</p> <p>14 Q. I'm going to show you the Diagnostic Imaging</p> <p>15 Report. I'll mark this as Defendants' Exhibit 2</p> <p>16 (handing). And I believe it may have been that</p> <p>17 Dr., we'll call him Goudie, who ordered this.</p> <p>18 A. Correct.</p> <p>19 Q. But this would have been something that you would</p> <p>20 have considered when you saw him as well,</p> <p>21 correct?</p> <p>22 A. Right. Yeah, it's just the X-ray of the,</p> <p>23 displacement of the patella when it's lost its,</p> <p>24 when the patellar tendon ruptures.</p> <p>25 Q. What was the result of this I guess X-ray?</p>	<p style="text-align: right;">12</p> <p>1 there a time on there when the ER doctor would</p> <p>2 have seen him? Sometimes they'll come in at 9:00</p> <p>3 or whenever and we'll do it the next day when we</p> <p>4 get an OR time.</p> <p>5 Q. I guess I'm just trying to differentiate when Dr.</p> <p>6 Goudie saw him, when your P.A. saw him, and when</p> <p>7 you saw him.</p> <p>8 A. Yeah, it would have been in that order. The ER</p> <p>9 doctor would have seen him, he would have called</p> <p>10 my P.A., my P.A. would have communicated with me,</p> <p>11 I would have gone in and seen him probably the</p> <p>12 next day, depending on what time it was. And</p> <p>13 then do the surgery the next day.</p> <p>14 Q. Is it fair to assume that you would have reviewed</p> <p>15 the ER physician's notes and your P.A.'s notes</p> <p>16 before you saw him or would you have taken your</p> <p>17 own history?</p> <p>18 A. I would probably not have looked at the ER</p> <p>19 doctor's notes, quite frankly. I would have</p> <p>20 talked with my P.A.</p> <p>21 Q. And does the description that you got from Mr.</p> <p>22 Lewis, we'll say in this History & Physical</p> <p>23 Report from the 12th, does that also comport with</p> <p>24 a patellar tendon rupture?</p> <p>25 Here on this, we'll look at this Page 35</p>
<p style="text-align: right;">11</p> <p>1 A. It's just a confirmation that he ruptured his</p> <p>2 patellar tendon.</p> <p>3 Q. So, this confirmed that it was not in fact a</p> <p>4 quadriceps tendon rupture?</p> <p>5 A. Correct. If you rupture your quad, the patella</p> <p>6 is going to move inferiorly. And if you rupture</p> <p>7 your patellar tendon, it's going to ride</p> <p>8 proximally or up.</p> <p>9 I'm just reading the report. It said,</p> <p>10 "slightly high riding."</p> <p>11 Q. Do the results from this X-ray comport with his</p> <p>12 description of what kind of symptoms he's</p> <p>13 experiencing?</p> <p>14 A. Yes.</p> <p>15 Q. Let's move back to this Defendants' Exhibit 1.</p> <p>16 Would the first time in this exhibit that I have</p> <p>17 handed you, that you saw him, be the History &</p> <p>18 Physical Report? Because I know these are a</p> <p>19 little bit out of order.</p> <p>20 A. So, this is the 12th. I assume I did the same</p> <p>21 day, didn't I? I don't know if I did or not.</p> <p>22 Let's see. It has the date of operation on it</p> <p>23 for some reason. 6/13.</p> <p>24 Q. Yes, I think it was the day after.</p> <p>25 A. The next day. So, I don't know what time -- is</p>	<p style="text-align: right;">13</p> <p>1 at the bottom corner.</p> <p>2 A. From the H&P, History & Physical?</p> <p>3 Q. Yes.</p> <p>4 A. And you were saying -- what was your question</p> <p>5 again?</p> <p>6 Q. Is the history taken here, is that also</p> <p>7 consistent with a bilateral patellar tendon</p> <p>8 rupture?</p> <p>9 A. Yes. So, this is me dictating the H&P. That</p> <p>10 actually is me dictating that note.</p> <p>11 Q. Staying on the same page here. Is SH, is that</p> <p>12 social history, is that what that stands for?</p> <p>13 A. Yes.</p> <p>14 Q. It's noted that he smokes about four cigarettes a</p> <p>15 day. And then it looks like something about his</p> <p>16 job that wasn't completed. Is that what you are</p> <p>17 seeing as well?</p> <p>18 A. Yes.</p> <p>19 Q. What is the significance of a smoker's history</p> <p>20 being included with this kind of injury?</p> <p>21 A. Healing rate could be less.</p> <p>22 Q. How so?</p> <p>23 A. Tendon to bone healing.</p> <p>24 Q. What kind of effect does being a smoker have on</p> <p>25 your tendon healing?</p>

<p style="text-align: right;">14</p> <p>1 A. It increases the failure rate. I can't quantify</p> <p>2 it but the failure rate.</p> <p>3 Q. Did you also perform a physical exam of Mr.</p> <p>4 Lewis?</p> <p>5 A. Yes.</p> <p>6 Q. What is the purpose of that exam in general</p> <p>7 terms?</p> <p>8 A. Just to assess his overall physical condition.</p> <p>9 But, more specifically, to assess the damaged</p> <p>10 area of his body before we operate.</p> <p>11 Q. What were your objective versus subjective</p> <p>12 findings once we deal with Mr. Lewis</p> <p>13 as quantified in this report?</p> <p>14 A. I mean, I could read you what I wrote.</p> <p>15 Q. Sure, that's fine.</p> <p>16 A. You want me to limit it to the extremities?</p> <p>17 Q. Yes, please.</p> <p>18 A. Well, he had a palpable defect below his kneecap</p> <p>19 and he had difficulty extending his knee. There</p> <p>20 was no defect above the kneecap, to suggest his</p> <p>21 quad tendon was intact.</p> <p>22 Q. So, again, it was confirmed that this was</p> <p>23 actually a patellar tendon rupture and not in</p> <p>24 fact the quadriceps?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">16</p> <p>1 when confirming the patellar tendon diagnosis</p> <p>2 that we haven't already discussed?</p> <p>3 A. No, ma'am.</p> <p>4 Q. Is there any common movement or particular set of</p> <p>5 circumstances that you see when you see a</p> <p>6 patellar tendon rupture?</p> <p>7 A. Say that again.</p> <p>8 Q. Sure. Is there any one way that you often see</p> <p>9 patients with this kind of injury, is there a</p> <p>10 common set of circumstances, that they fall in a</p> <p>11 particular way maybe?</p> <p>12 A. You could fall. Sometimes I've had people</p> <p>13 getting out of a chair, getting out of a low</p> <p>14 chair. Usually it's a trip or stumble. I've</p> <p>15 seen those two. Or there could be a traumatic</p> <p>16 laceration but that's a different injury.</p> <p>17 Q. I see that you performed the surgery, I think we</p> <p>18 established the following day after he reported</p> <p>19 to the ER, is that correct?</p> <p>20 A. You know, my dictation is from that day and I</p> <p>21 usually dictate immediately after. So, I would</p> <p>22 say, it says 6/13, 11 a.m., it looks like. Yeah.</p> <p>23 99 percent of the time that's exactly when I did</p> <p>24 it. I'm looking at the dictation time.</p> <p>25 For some reason the date of operation is</p>
<p style="text-align: right;">15</p> <p>1 Q. Can you describe the mechanism of injury with a</p> <p>2 patellar tendon rupture?</p> <p>3 A. Usually it's a forced knee flexion, oftentimes</p> <p>4 when the quad is activated.</p> <p>5 Q. I've heard -- I'm sorry, I didn't mean to cut you</p> <p>6 off. Go ahead.</p> <p>7 A. It's a tensile injury, a tension injury that</p> <p>8 overcomes the ability of the tendon to withstand.</p> <p>9 So, it's usually an acute abrupt force, tension</p> <p>10 force on the extensor mechanism which involves</p> <p>11 the quad tendon, the patella, the patellar tendon</p> <p>12 and the tibial tubercle as well. A stretching.</p> <p>13 Q. I've heard the phrase forced extension against a</p> <p>14 fixed flexion about a patellar tendon injury.</p> <p>15 A. It would be a forced flexion against a fixed or</p> <p>16 active extension. The force is in flexion, the</p> <p>17 knee bending.</p> <p>18 Q. I see. I just got it backwards?</p> <p>19 A. Yes.</p> <p>20 Q. Was this basketball injury that Mr. Lewis</p> <p>21 described to you, was that consistent with that</p> <p>22 extension flexion mechanism of injury?</p> <p>23 A. Yes.</p> <p>24 Q. Was there anything else in his history or</p> <p>25 anything that he told you that you considered</p>	<p style="text-align: right;">17</p> <p>1 not on there. It's unusual. That's the only</p> <p>2 thing that would give me pause with certainty.</p> <p>3 But, typically my dictation is, I go straight to</p> <p>4 the Dictaphone. So, I'm going to say with</p> <p>5 99 percent certainty I did it the follow day,</p> <p>6 yes.</p> <p>7 Q. I'm going to show you what I'll mark as</p> <p>8 Defendants' Exhibit 3. We'll call it the</p> <p>9 Preanesthetic Evaluation (handing).</p> <p>10 A. Okay.</p> <p>11 Q. I just wanted to discuss "smoker, two to three</p> <p>12 times a day." Is that noted because of what you</p> <p>13 told me about earlier, it may have some effect on</p> <p>14 the healing rate?</p> <p>15 A. I don't think anesthesia cares about that. They</p> <p>16 care more about the lungs. We think about it</p> <p>17 differently. But, I mean, the same history,</p> <p>18 though.</p> <p>19 Q. Right. It's noted that his respiratory system is</p> <p>20 abnormal next to that. Do you have any</p> <p>21 recollection as to how that finding was --</p> <p>22 A. I do not. No, I don't. I don't see a</p> <p>23 description of it, no.</p> <p>24 Q. And the same with number nine, his</p> <p>25 musculoskeletal system. Is that because of the</p>

<p style="text-align: right;">22</p> <p>1 seeing Dr. Butler. And then it goes on to say 2 what's going to happen at his next visit with 3 you. 4 And I think we've agreed we don't have any 5 records after his discharge. So, do you know if 6 he saw another doctor in your practice or did he 7 ever follow up with you? 8 A. I have no recollection or I have nothing to 9 indicate that he saw us again. 10 Q. Do you recall ever seeing Mr. Lewis after his 11 discharge on June 15, 2008? 12 A. I do not. 13 Q. I think that's all I have for you. Thank you, 14 Dr. Butler. 15 EXAMINATION BY MR. SANDEFUR: 16 Q. Dr. Butler, your testimony is that you have not 17 seen Mr. Lewis in a clinical setting since 2008, 18 is that right? 19 A. I don't have any documents to suggest that. 20 Q. And because you don't have any documents to 21 suggest that and, to your recollection, the last 22 time you saw him was in 2008, do you have 23 significant -- 24 A. I take that back. I think I did see him in 2020. 25 THE WITNESS: Do you have that record?</p>	<p style="text-align: right;">24</p> <p>1 Q. After that January 22, 2020 visit, do you have 2 any records or notes that would indicate that he 3 came to follow up with you? 4 A. I think that's the last and only note that I 5 have. 6 Q. And then would it be the case that you have not 7 seen Jonathan clinically since January 22, 2020? 8 A. That is correct. 9 Q. That's all I have. Thank you. 10 REEXAMINATION BY MS. BROWN: 11 Q. Real quick, Doctor. Let's talk about that 12 January 22, 2020 visit real quick. Would you 13 mind reading for us what his History of Present 14 Illness was? 15 A. "Jonathan comes in today for left knee pain and 16 swelling. I did bilateral patellar tendon 17 repairs" -- read the whole thing? 18 Q. Yes, please. 19 A. "Bilateral patellar tendon repairs 12 years ago. 20 He did well afterwards. He played semipro and 21 arena football. He says that his standing 22 endurance is only about 30 minutes and, as a 23 result, he can no longer work as a security guard 24 as he was doing. Patient having pain for about 25 five to six years now. He has swelling and</p>
<p style="text-align: right;">23</p> <p>1 MS. BROWN: We do not. 2 A. There is one, I'm sorry. There is a 2020 note 3 that I saw him 12 years later. 4 MS. BROWN: Can you give me that date, 5 please. 6 THE WITNESS: 1/22/2020. 7 MS. BROWN: I take it back. I do have 8 that record. Go ahead. Sorry. 9 THE WITNESS: Do you have this? 10 MR. SANDEFUR: I don't. 11 BY MR. SANDEFUR: 12 Q. Is that the actual record that you have, Dr. 13 Butler, or is that just the note? 14 A. This is the note of his visit. 15 Q. Can I see it real quick? 16 A. (Handing). 17 Q. Thank you. 18 A. That's the only note. Quite frankly, I've never 19 seen it. 20 Q. So, that 2020 note, that would have been the last 21 time you saw Mr. Lewis? 22 A. Yes. 23 Q. And he came in with a complaint of knee pain, is 24 that correct? 25 A. Left knee pain and swelling.</p>	<p style="text-align: right;">25</p> <p>1 giving way. He has gained 120 pounds over the 2 last six years." 3 Q. Now, I think you told me earlier that obesity and 4 weight gain may have an effect on the patellar 5 tendon repair, is that correct? 6 A. Well, I think it makes, the higher the tensile 7 forces that a repaired tendon and subsequent 8 tendon to bone healing is subjected to, would 9 make it a higher likelihood of recurrent tear. 10 That's kind of what I was implying. 11 I think the healing process had long been 12 ended, probably at six to 12 months after the 13 surgery. But, you know, it's not as good as the 14 native knee. It never is quite as good as the 15 native knee because of the way the tendon heals 16 to the bone. 17 Q. The swelling and giving way that was happening to 18 him, did that concern you for potential reinjury 19 of that? 20 A. No. 21 Q. Why not? 22 A. That's not how it presents. It would be an 23 abrupt event. If it failed, it wouldn't be 24 subtle. It would be -- this sounds more like an 25 arthritic thing.</p>